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PART IV.

THE PENAL PROCESS (Cann. 1717 - 1731)

CHAPTER I.

The Preliminary Investigation

Can. 1717 §1. Whenever an ordinary has knowledge, which at least seems true, of a delict, he is carefully to inquire personally or through another suitable person about the facts, circumstances, and imputability, unless such an inquiry seems entirely superfluous.

§2. Care must be taken so that the good name of anyone is not endangered from this investigation.

§3. The person who conducts the investigation has the same powers and obligations as an auditor in the process; the same person cannot act as a judge in the matter if a judicial process is initiated later.

Can. 1718 §1. When it seems that sufficient evidence has been collected, the ordinary is to decide:

1/ whether a process to inflict or declare a penalty can be initiated;

2/ whether, attentive to \Rightarrow can. 1341, this is expedient;

3/ whether a judicial process must be used or, unless the law forbids it, whether the matter must proceed by way of extrajudicial decree.

§2. The ordinary is to revoke or change the decree mentioned in §1 whenever new evidence indicates to him that another decision is necessary.

§3. In issuing the decrees mentioned in §§1 and 2, the ordinary is to hear two judges or other experts of the law if he considers it prudent.

§4. Before he makes a decision according to the norm of §1 and in order to avoid useless trials, the ordinary is to examine carefully whether it is expedient for him or the investigator, with the consent of the parties, to resolve equitably the question of damages.

Can. 1719 The acts of the investigation, the decrees of the ordinary which initiated and concluded the investigation, and everything which preceded the investigation are to be kept in the secret archive of the curia if they are not necessary for the penal process.

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CHAPTER II.

THE DEVELOPMENT OF THE PROCESS

Can. 1720 If the ordinary thinks that the matter must proceed by way of extrajudicial decree:

1/ he is to inform the accused of the accusation and the proofs, giving an opportunity for self-defense, unless the accused neglected to appear after being properly summoned;

2/ he is to weigh carefully all the proofs and arguments with two assessors;

3/ if the delict is certainly established and a criminal action is not extinguished, he is to issue a decree according to the norm of ⇒ cann. 1342-1350, setting forth the reasons in law and in fact at least briefly.

Can. 1721 §1. If the ordinary has decreed that a judicial penal process must be initiated, he is to hand over the acts of the investigation to the promoter of justice who is to present a libellus of accusation to the judge according to the norm of cann. ⇒ 1502 and ⇒ 1504.

§2. The promoter of justice appointed to the higher tribunal acts as the petitioner before that tribunal.

Can. 1722 To prevent scandals, to protect the freedom of witnesses, and to guard the course of justice, the ordinary, after having heard the promoter of justice and cited the accused, at any stage of the process can exclude the accused from the sacred ministry or from some office and ecclesiastical function, can impose or forbid residence in some place or territory, or even can prohibit public participation in the Most Holy Eucharist. Once the cause ceases, all these measures must be revoked; they also end by the law itself when the penal process ceases.

Can. 1723 §1. The judge who cites the accused must invite the accused to appoint an advocate according to the norm of ⇒ can. 1481, §1 within the time limit set by the judge.

§2. If the accused does not make provision, the judge is to appoint an advocate before the joinder of the issue; this advocate will remain in this function as long as the accused does not appoint an advocate personally.

Can. 1724 §1. At any grade of the trial the promoter of justice can renounce the trial at the command of or with the consent of the ordinary whose deliberation initiated the process.

§2. For validity the accused must accept the renunciation unless the accused was declared absent from the trial.

Can. 1725 In the discussion of the case, whether done in written or oral form, the accused, either personally or through the advocate or procurator, always has the right to write or speak last.

Can. 1726 If at any grade and stage of the penal trial it is evidently established that the accused did not commit the delict, the judge must declare this in a sentence and absolve the accused even if it is also established that criminal action has been extinguished.

Can. 1727 §1. The accused can propose an appeal even if the sentence dismissed the accused only because the penalty was facultative or because the judge used the power mentioned in cann. [⇒](#) 1344 and [⇒](#) 1345.

§2. The promoter of justice can appeal whenever the promoter judges that the repair of scandal or the restoration of justice has not been provided for sufficiently.

Can. 1728 §1. Without prejudice to the prescripts of the canons of this title and unless the nature of the matter precludes it, the canons on trials in general and on the ordinary contentious trial must be applied in a penal trial; the special norms for cases which pertain to the public good are also to be observed.

§2. The accused is not bound to confess the delict nor can an oath be administered to the accused.

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CHAPTER III.

ACTION TO REPAIR DAMAGES

Can. 1729 §1. In the penal trial itself an injured party can bring a contentious action to repair damages incurred personally from the delict, according to the norm of ⇒ can. 1596.

§2. The intervention of the injured party mentioned in §1 is not admitted later if it was not made in the first grade of the penal trial.

§3. The appeal in a case for damages is made according to the norm of ⇒ cann. 1628-1640 even if an appeal cannot be made in the penal trial; if both appeals are proposed, although by different parties, there is to be a single appellate trial, without prejudice to the prescript of ⇒ can. 1730.

Can. 1730 §1. To avoid excessive delays in the penal trial the judge can defer the judgment for damages until he has rendered the definitive sentence in the penal trial.

§2. After rendering the sentence in the penal trial, the judge who does this must adjudicate for damages even if the penal trial still is pending because of a proposed challenge or the accused has been absolved for a cause which does not remove the obligation to repair damages.

Can. 1731 Even if the sentence rendered in a penal trial has become a res iudicata, it in no way establishes the right of the injured party unless this party has intervened according to the norm of ⇒ can. 1729.

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